

Citation: *R. v. Singh and Lowe*, 2011 YKTC 21

Date: 20100114
Docket: 09-00489
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

JOHN VIJEND SINGH
ROBERT KEVIN LOWE

Appearances:
Ludovic Gouaillier
Gordon Coffin
Robert Lowe

Counsel for the Crown
Counsel for the Accused Singh
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): John Vijend Singh, Wade Charles Colquhoun and Robert Kevin Lowe were jointly charged with assaulting Reginald Ram.

[2] Mr. Singh faces additional charges of assault with a weapon and of uttering threats against Mr. Ram and his common-law wife. At the outset of the trial, Mr. Singh entered a guilty plea to the assault charge. This plea was not accepted by the Crown and the trial proceeded. After trial, I gave judgment dismissing the charge against Mr. Colquhoun, and reserved judgment respecting Messrs. Singh and Lowe.

[3] The principal Crown witness was the complainant, Reginald Ram. Mr. Ram

testified that Mr. Singh is his cousin. On the evening of August 3, 2009, Mr. Ram and Mr. Singh were drinking together outside of the apartment building where Mr. Ram resides. Near midnight, Mr. Singh proposed that the two of them go to Coasters, a local bar, where Mr. Singh worked. On arrival at Coasters, both consumed additional alcohol. Eventually, the bar closed, but Mr. Singh and Mr. Ram remained in the bar and continued to drink. Mr. Lowe, who apparently worked at the bar, also remained after closing. Eventually, Mr. Singh left Mr. Ram alone at their table, and talked on the phone for a considerable period of time. Mr. Ram began to be concerned that things were not quite right, and decided he should leave. However, the doors were now locked and required a key to get out. Mr. Ram asked Mr. Lowe if he could go outside for a smoke, Mr. Lowe said that he could not go outside and then come back in as the door had to remain locked. Mr. Ram, not wanting Lowe and Singh to know that he intended to leave, did not press the point but returned to his table. Eventually, he went to the washroom.

[4] On his return, Mr. Singh was again seated at the table. He accused Mr. Ram of ratting out or informing the police on Bobby, who was one of Mr. Singh's boys. Mr. Ram denied it. Through the conversation that ensued it became clear to Mr. Ram that Bobby was a man named Ryan Derkson. The conversation continued with accusations by Mr. Singh and denials by Mr. Ram. Mr. Singh punched Mr. Ram in the face; he told Mr. Ram not to lie, and punched him again. Mr. Ram said he ended up on the floor, crying. Mr. Singh told him to stop crying. Mr. Singh would pick Mr. Ram up, put him in his chair, and then knock him to the floor again, where he was repeatedly punched and kicked.

[5] Meanwhile, Mr. Lowe came to the table and sat down. Mr. Singh said to Mr. Lowe, "Should I deal with him myself or get the boys to do it?" In addition to this threat to Mr. Ram, Mr. Singh also threatened to have his boys break into Mr. Ram's apartment and rape his wife. During the course of the assault, Mr. Ram said Mr. Singh at one point had his hands around Mr. Ram's throat, and also struck him with a chair. Eventually the beating stopped.

[6] A cab was called, and Mr. Singh, Mr. Lowe, and Mr. Ram got in. After dropping Mr. Lowe off in Riverdale, Mr. Singh and Mr. Ram proceeded to the apartment building in Porter Creek, where Mr. Ram was allowed to go to his apartment, and he went to bed.

[7] The next morning he went to the hospital for treatment of his injuries, which he said included black eyes, a bump on his head, numerous bruises, cuts, and a concussion.

[8] Mr. Ram's evidence was subject to certain frailties, in particular, the evidence was that the investigating constable who interviewed Mr. Ram at the Whitehorse General Hospital only noted and photographed a black eye. He noted no other injuries, although Mr. Ram was in bed at the time, with bedding covering his body up to the neck, and Mr. Ram did complain of being sore all over. As well, the medical records, which were put to Mr. Ram in cross-examination, appeared not to support his contention that he suffered a concussion or any cuts. Unfortunately, no medical evidence was actually tendered. So the extent, if any, to which Mr. Ram may have overstated his injuries remains uncertain. However, even assuming he did so, it nonetheless seems

inconceivable that Mr. Ram went to the hospital and was admitted for treatment if he was suffering nothing worse than a black eye and a hangover.

[9] There were other alleged deficiencies in Mr. Ram's evidence, including his constantly escalating estimate of how much he had to drink, and his constantly diminishing estimate of what portions of the evening were lost to his memory. Suffice it to say that I was left with the impression that I should view his evidence with a good deal of caution, and not accept it without finding support or corroboration elsewhere in the evidence.

[10] This brings us to the matter of the video surveillance. As it happens, Coasters bar is protected by video surveillance cameras, which were installed and operating in the early hours of August 4, 2009, when the events described by Mr. Ram are alleged to have occurred. There are, however, some problems with the installation: first, the cameras record video but not audio; secondly, and more seriously, the cameras do not operate continuously. They are apparently intended to operate in response to motion sensors; however, it is clear that the system has its limitations as the recording often stops in the middle of obvious action. In fact, the camera recordings of the area of the bar where Mr. Ram and Mr. Singh were located only recorded approximately four minutes of video during the period from 12:55 a.m. to 3:30 a.m. on August 4th.

[11] In order to understand the significance of what was recorded on these snippets of video, it was necessary to view the video numerous times, and it is also necessary to set out in some detail what these pieces of video actually record. The first recording starts at 12:55:10 and runs to 12:56:55; Mr. Singh and Mr. Ram can be seen sitting at a

bar table talking. Mr. Lowe appears briefly.

[12] The next segment runs from 01:51:58 to 01:52:19. In this portion of the video, Mr. Singh and Mr. Ram have moved to another table, fortunately or unfortunately, depending on your point of view, much closer to the camera. There is an animated discussion going on between the two. Mr. Singh gestures towards Mr. Ram; Mr. Ram raises his hands more than once in a gesture consistent with him protesting or disputing what is being said by Mr. Singh.

[13] The next segment of video runs only 20 seconds, from 02:07:08 to 02:07:28 a.m.. Mr. Singh and Mr. Ram are still at the table, but Mr. Singh is standing up, bent over towards Mr. Ram, obviously talking forcefully to Mr. Ram. Mr. Lowe comes over and stands near the table, but does not sit down, and then walks away.

[14] The tape next starts shortly after, at 02:07:39 and operates another 20 seconds, until 02:07:59. Mr. Ram is still in his chair; Mr. Singh is up and appears to be retrieving something from the floor. He returns to his seat, and appears to say something to Mr. Ram as he passes. Singh re-takes his seat and continues speaking to Mr. Ram, who has his head in his hands. Mr. Lowe comes toward the table.

[15] The next segment runs from 02:08:23 to 02:09:28. Mr. Lowe is seated at the table with Mr. Singh and Mr. Ram. Mr. Singh turns to Mr. Lowe and appears to say something to him. Mr. Ram still has his head in his hands. Mr. Singh makes an accusatory pointing gesture towards Mr. Ram. Mr. Singh gets out of his chair, moves towards Mr. Ram and appears to strike him.

[16] The tape stops at this point, and does not resume until 03:04:22. The remaining video and the video from a second camera simply show Singh and Lowe locking up, and then the pair of them leaving the building with Mr. Ram.

[17] Having viewed the video, I find that it does substantially corroborate Mr. Ram's evidence, even though it fails to record much of the actual beating he describes. At the most basic level, the video confirms that Mr. Singh, Mr. Lowe and Mr. Ram were at the bar for some hours in the early morning of August 4th, as Mr. Ram alleges. In addition, the video shows Mr. Singh acting aggressively and in an accusatory and threatening manner. Conversely, it shows Mr. Ram acting in a submissive and defensive fashion. The video also shows, albeit very briefly, an assault by Mr. Singh on Mr. Ram. As for Mr. Lowe, the video shows him near or seated at the table, and it shows Mr. Singh speaking to Mr. Lowe as he sits at the table. Thus, the video provides a substantial degree of support for Mr. Ram's claim that he was the victim of an assault and intimidation perpetrated by Mr. Singh, and that Mr. Lowe was involved at least to the extent of adding to the number of players on Mr. Singh's team, adding to the intimidation factor, and thus, abetting the commission of the assault, whether or not Mr. Lowe actually struck Mr. Ram.

[18] In the result, I am satisfied that the events occurred substantially as Mr. Ram alleges. Mr. Singh accused Mr. Ram of informing on one of Mr. Singh's associates, and he verbally, and physically assaulted him over a considerable period of time, with supporting actor assistance from Mr. Lowe. The extent of the injuries remains uncertain, as I have already said, but it is obvious that Mr. Ram suffered a considerable degree of hurt and discomfort, some of which may have been physical, and some of

which may have been psychological, both resulting in his going to the hospital for treatment. As well, I find that the alleged threats uttered by Mr. Singh are entirely consistent with the overall scenario that developed, and I am satisfied that they occurred.

[19] It remains to consider the charge of assault with a weapon, the weapon alleged to have been one of the barroom chairs. Mr. Ram's evidence on this point is somewhat difficult to follow. He first said that Mr. Singh struck him with it, perhaps aided by his foot in propelling the chair. Later on, he said that what occurred was that Mr. Singh had tried to grab the chair, and that Mr. Ram resisted. Mr. Singh let go, and the result was that the chair struck Mr. Ram because it was drawn toward him by his own effort. The video fails to shed any light on this aspect of the matter. I do not find it necessary to get into too fine an analysis of the law regarding causation in assault cases. The evidence on this point is unsatisfactory and the frailties in that evidence must inure to the benefit of the accused.

[20] In the result, the charge of assault with a weapon is dismissed, but I find Mr. Singh guilty of assault, guilty of uttering threats to cause bodily harm to Mr. Ram, and guilty of uttering threats to cause bodily harm to Mr. Ram's wife, Jeanene Gallinger. I find Mr. Lowe guilty as a party to the charge of assault.

[21] MR. COFFIN: With respect to Mr. Singh, I would seek an adjournment of the matter in preparation of a pre-sentence report. I understand the Crown will be contesting for a period of custody, and it would be appropriate, in my

submission, to have further background on Mr. Singh. I would suggest the matter be adjourned to tomorrow's fix date to find time when the matter can be concluded.

[22] THE COURT: Mr. Gouaillier, what is the Crown's position on that application?

[23] MR. GOUAILLIER: The Crown would have been ready to proceed today to disposition and is contending -- the Crown would have been ready to proceed today to sentencing and is contending for a period of in custody. This being said, a pre-sentence report may bring some background information on Mr. Singh, and he's been -- he's been compliant with his conditions of release so far.

[24] THE COURT: Fine. What about Mr. Lowe?

[25] MR. GOUAILLIER: Mr. Lowe, Crown is ready to proceed today to sentencing. I don't know what his position is in terms of --

[26] THE COURT: Mr. Lowe.

[27] THE ACCUSED LOWE: I'm sorry, sir, I'm just -- I'm not clear as to the being found guilty to a party of assault is what you said?

[28] THE COURT: Yes, every one is guilty of an assault who actually commits it or aids and abets another person to commit it. That is my finding with respect to you, sir.

[29] THE ACCUSED LOWE: All right. If it's possible, I would like to get a report from my Probation Officer or -- if that's okay?

[30] THE COURT: All right. Well, if the matter is going to be adjourned with respect to Mr. Singh, I think it would make sense to adjourn it with respect to Mr. Lowe as well, and also direct the preparation of a pre-sentence report, since he is unrepresented. I have found that this is, in essence, a joint enterprise, although, clearly, the degree of culpability is different. So I think it would be appropriate that they be sentenced together.

[31] With respect to both accused, I will direct the preparation of a pre-sentence report. The matters will go to tomorrow, January 15th at 1:00 to fix a date.

FAULKNER T.C.J.